

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2146 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC, THROUGH LEGAL ADVISOR

Versus

BHUPENDRA HARILAL PATEL

Appearance:

MR YOGESH S LAKHANI for Petitioners
MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/03/2000

ORAL JUDGEMENT

#. The respondent is in employment of the petitioner. He is holding the post of Conductor. He was dismissed from services after holding full-fledged departmental inquiry on the misconduct of carrying passenger without

ticket in the corporation bus. Before any final order could have been passed he filed a Civil Suit No.1019 of 1994 and obtained order from civil court in case any adverse order is passed against him, it would be effective after 15 days. So he has taken interim relief in his favour in the anticipation of any adverse order is passed against him. I fail to see how such an order could have been passed by civil court in a suit. That order is not under challenge in this Civil Revision Application and nothing more now to be gone into in this respect.

#. The order of the petitioner dismissing the respondent from services was received by him on 28/10/94 and he filed Civil Suit No.2871 of 1994. Prayer has been made therein by filing Exh.5 for grant of interim relief and learned trial court granted the interim relief in his favour. Meaning thereby, the dismissal order could not be given effect and the respondent continuing in services for all these years.

#. The learned counsel for the petitioner contended that the respondent is a workman and corporation is an Industry. The dismissal of the respondent from the services is an industrial dispute and the civil court has no jurisdiction in the matter. It has next been contended that the order of the dismissal of the respondent from services of the corporation is appealable and appeal has also not been filed. In such matters leaving apart whether the civil court has jurisdiction or not the civil court should not interfere for the reasons that in labour court the management has right to prove the misconduct of the workman in a case where the domestic inquiry held against him was found to be defective, which right is not available to the management in the civil court. Carrying this contention further Shri Dagli submits that if ultimately in the labour court the charges are proved by the management that order will relate back to the date of original order passed by the management of the dismissal of the workman from the services. In his submission even if it is taken that in the inquiry principles of natural justice have been violated still court has no jurisdiction to order for the reinstatement of the workman concerned. In such case if ultimately the civil court comes to the conclusion that there is violation of principles of natural justice in holding inquiry at the best the direction could have been given to proceed in the inquiry from the stage where the fault and violation has been pointed out. But decree to reinstate the workman in service could not have been passed. In support of this contention, Shri Dagli relied

upon the decision of the apex court in the case of State of Punjab Vs. Dr. Harbhajan Singh reported in JT 1996(5) SC 403. It is submitted at the final stage of the suit even if the case of the respondent is accepted the court has no jurisdiction to order for his reinstatement how far it is permissible to the court to grant this relief at the interlocutory stage.

#. Shri Dagli urges that in the case of dismissal of an employee by the Corporation, after holding a domestic inquiry on serious charges of misappropriation of Corporation's money etc., if such interim relief is granted then it amounts to granting of final relief at the interlocutory stage. Concluding his submissions, Shri Dagli submits that even if it is taken that prima facie case is made out by the respondent, no interim injunction could not have been granted in his favour as the same will not result in causing any irreparable injury to him, which cannot be compensated in terms of money nor it can be said that by declining the interim relief the respondent shall be put in an irretrievable position. The balance of convenience also does not favour in such matters for grant of temporary injunction.

#. Shri Chauhan, learned counsel for the respondent in contra submitted that both the courts have considered it to be a fit case to grant the temporary injunction in favour of the respondent and this court may not interfere in this matter. It has next been contended that the civil court has jurisdiction in such matters which has rightly been held so by the First Appellate Court. Lastly it is contended that the respondent is working for all these years in the Corporation under the court's order and the suit is of year 1994 and this court may not interfere in the matter and direct the trial court to decide the suit within the time bound programme.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. I do not consider it to be a fit case where all these larger points raised by the learned counsel for the petitioner are to be decided at this state. It is true that both the courts below have given finding that the civil court has jurisdiction to try the suit. But these are only tentative and provisional findings for deciding the Exh.5. These are not the final and conclusive findings and still this matter is open for consideration for trial court. The trial court will have to frame issue on jurisdiction of the court to try the suit and then to decide the same in accordance with law. In view

of this fact on this question of jurisdiction to try the suit, no further discussion needs to be made.

#. The grant of temporary injunction under Order 39 Rules 1 and 2 of Code of Civil Procedure is discretion of the trial court. It is true that in this case both the courts have granted the temporary injunction in favour of the respondents but the very fact that it is a case of dismissal of workman / employee of the Corporation on proved misconduct even if ultimately the inquiry was held to be not proper, fair, reasonable and in consonance with the natural justice, reinstatement cannot be ordered then how far it is justified for the courts below to grant this relief in favour of the respondent at this stage. A relief which cannot be granted at the final stage of the suit how it could have been granted at the interlocutory stage. I find sufficient merits in the contention of Mr. Dgali that the grant of the temporary injunction in this case amounts to granting of final relief. Time and again the apex court has deprecated this practice of the courts to grant final relief at the interlocutory stage.

#. The matter is squarely covered by the decision of the apex court in the case of State of Punjab Vs. Dr. Harbhajan Singh (supra). Whatever the violation of principles of natural justice alleged to be made by the respondents in conducting the inquiry is prima facie accepted to be correct by the courts below still it cannot be a ground for continuing the respondent in the service of the Corporation. The respondent is dismissed from services and in case ultimately he succeeds in the suit he can be given all the benefits but he cannot be allowed to continue in services pending trial of the suit. It is not the case where declining of the relief to the respondent, it will result in causing any irreparable injury to him which cannot be compensated in terms of money. Contrary to it, the grant of the interim relief in such matter heavily detrimental to the corporation. It encourages or give a wrong message to the workmen / employees that even if they are involved in the corrupt practices or misappropriate the corporation money they will be protected by the court. Continuing a corrupt employee in the service is also not in the larger interest of the Corporation more so where if ultimately he succeeds in the suit the court has ample powers to grant all the reliefs to him for which he would have been legally found entitled. The balance of convenience in such cases also does not favour for grant of temporary injunction. Shri Chauhan is correct in his submission that for all these years, the respondent is continuing in

the service, but only on this ground the interim relief or temporary injunction granted by the courts below cannot be continued. It is a case where both the courts have not considered the basic principles, which are to be adhered to while considering the application of dismissed employee for grant of the temporary injunction in his favour. The interim order or interim relief or temporary injunction should not amount to overreaching the main relief, which ultimately may or may not be granted by the court. In view of the law laid down by the apex court in the case of State of Punjab Vs. Dr. Harbhajan Singh (supra) grant of interim relief at this stage in the case is certainly overreaching the main relief. It is also a settled position of law that a relief, which is even not permissible to be granted to the litigant at the final stage of the litigation cannot be granted at the interlocutory stage.

##. This is a case which clearly falls under Clause (c) of Subsection (1) of Section 115 of Code of Civil Procedure. The orders of the courts below cannot be allowed to stand. It is a case where in case the impugned orders are allowed to stand, it will certainly occasion a failure of justice to the petitioners and will cause irreparable injury to them also. It is a case where after full-fledged domestic inquiry the punishment of the dismissal from services has been imposed and at the interlocutory stage if such reliefs are being granted the very laying down of this procedure of departmental inquiry to be undergone will be of no use. Secondly on failure of respondent in the suit it may be difficult for the courts to order for recovery of all the wages and allowances received by him from the Corporation. Contrary to it on his success the court can direct the corporation to give all benefits for which he is found legally entitled.

In the result, this revision succeeds and the same is allowed. The order of the District Judge, Rajkot dated 15/5/95 in Civil Misc. Appeal No.7 of 1995 and that of the 2nd Jt. Civil Judge (S.D.), Rajkot dated 17/12/1994 below Exh.5 in Civil Suit No.2871/94 are quashed and set aside. The application filed by the respondent at Exh.5 is dismissed. However, the learned trial court is directed to dispose of the suit finally within a period of six months from the date of the receipt of the writ of this order or certified copy thereof. In the facts of this case, no order as to costs. Rule is made absolute accordingly.

(S.K.Keshote, J.)

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